

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARK ALAN BURAZIN, EDWARD JOSEPH VAN RENGEN,
KENNETH CURTIS LARSON, JEROME STEVEN VEITH, RALPH L. ANDERSON
and MICHAEL WILLIAM VEITH

Appeal No. 2005-2730
Application No. 09/441,987

ON BRIEF



Before KIMLIN, KRATZ and TIMM, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-22 and 48-71. Claims 1 and 48 are illustrative:

1. A row of non-embossed tissue basesheet having a roll bulk of 16 cubic centimeters or greater per gram and a roll firmness of 8 millimeters or less, wherein the non-embossed tissue basesheet has a single sheet caliper of from about 0.02 to about 0.05 inch.
48. A roll of uncreped throughdried tissue having a roll bulk of 16 cubic centimeters or greater per gram and a roll firmness of 8 millimeters or less.

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The examiner relies upon the following references as evidence of obviousness:

Wendt et al. (Wendt)	5,672,248	Sep. 30, 1997
Archer et al. (Archer)	6,077,590	Jun. 20, 2000

Appellants' claimed invention is directed to a roll of tissue having the recited characteristics that is either non-embossed (claim 1) or uncreped (claim 48).

Appealed claims 1-22, 70 and 71 stand rejected under 35 U.S.C. § 112, first paragraph, description requirement. Claims 48-69 stand rejected under 35 U.S.C. § 103 as being unpatentable over Wendt in view of Archer.

Appellants submit at page 2 of the brief that "[f]or purposes of this appeal only, for each ground of rejection, all of the rejected claims stand or fall together." Accordingly, claims 2-22, 70 and 71 stand or fall together with claim 1, whereas claims 49-69 stand or fall together with claim 48.

We have thoroughly reviewed each of appellants' arguments for patentability. However, we find that the examiner's rejections are well-founded and in accordance with current patent jurisprudence. Accordingly, we will sustain the examiner's rejections for essentially those reasons expressed in the answer.

We consider first the examiner's rejection under Section 112, first paragraph, description requirement. We concur with

the examiner that the present specification fails to provide descriptive support for the claim language "non-embossed tissue basesheet." Like the examiner, we find that appellants' original specification fails to reasonably convey to one of ordinary skill in the art that appellants had in their possession at the time of filing the present application the concept of a non-embossed tissue base sheet. We are not persuaded by appellants' argument that the specification makes no reference to embossing, particularly in the examples, such as Example 1. We come to this conclusion because not only does the present specification fail to convey that the disclosed invention excludes embossed sheets, but, also, we find that the transfer fabric which imparts rows of elevated pillow-like regions to the tissue performs, in fact, an embossing step. A typical dictionary definition of the term "embossed" is to decorate or cover a surface with designs or patterns raised above the surface. Manifestly, the admitted elevated or raised pillow-like regions of appellants' sheet constitute an embossed surface. We also note that appellants' specification disclosure of transferring "impression knuckles" of a transfer fabric which forms bar-like protrusions on the tissue sheet (see paragraph bridging pages 1 and 2), and "a tissue sheet comprising generally parallel rows of

elevated pillow-like regions . . . " (page 3 of specification, lines 26 et. seq.). Hence, inasmuch as appellants' invention comprises tissue base sheet having raised areas on its surface, we find no factual basis for appellants' position that the original specification discloses non-embossed tissue base sheet.

We now turn to the Section 103 rejection over Wendt in view of Archer. Appellants do not dispute the factual determinations of the examiner with respect to the physical characteristics for the tissues of Wendt and Archer set forth at pages 4 and 5 of the examiner's answer. Rather, it is appellants' position that since Wendt "describes a method of making soft uncreped throughdried tissues [and Archer] describes a method of embossing wet-pressed creped paper sheets by treating them with steam immediately prior to embossing" (page 3 of brief, last paragraph, first emphasis supplied), one of ordinary skill in the art would not have found it obvious to combine the teachings of Archer, directed to creped sheets, to the disclosure of Wendt which is directed to uncreped tissue. However, as explained by the examiner, Wendt clearly teaches that "[t]he dried web can be creped or remain uncreped" (column 2, lines 23-24). Appellants have not addressed this teaching of Wendt in their brief, nor submitted a reply brief. Accordingly, the thrust of appellants' argument regarding the

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Section 103 rejection is without the requisite factual support. Consequently, appellants have not rebutted the examiner's reasonable legal conclusion that it would have been obvious for one of ordinary skill in the art "to use the process of Archer on the tissue of Wendt in order to increase the bulk of the tissue [which] would increase the strength of the tissue" (page 5 of answer, last paragraph).

As a final point, we note that appellants base no argument upon objective evidence of nonobviousness, such as unexpected results, which would serve to rebut the prima facie case of obviousness established by the examiner.

In conclusion, based on the foregoing and the reasons well-stated by the examiner, the examiner's decision rejecting the appealed claims is affirmed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

Edward C. Kimlin

EDWARD C. KIMLIN)
Administrative Patent Judge)
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Peter F. Kratz

PETER F. KRATZ)
Administrative Patent Judge)
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BOARD OF PATENT
APPEALS AND
INTERFERENCES

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